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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,368	11/20/2003	Lewis Michael Popplewell	IFF-43	9535

48080 7590 02/24/2006

INTERNATIONAL FLAVORS & FRAGRANCES INC.
521 WEST 57TH ST
NEW YORK, NY 10019

EXAMINER	
HARDEE, JOHN R	

ART UNIT	PAPER NUMBER
1751	

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/718,368	POPPLEWELL ET AL.	
	Examiner	Art Unit	
	John R. Hardee	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3,9-18,50,52,56 and 59* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3 and 9-15* is/are rejected.

7)☒ Claim(s) *16-18,50,52,56 and 59* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *(4)*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's cancellation of the non-elected inventions and applicant's election without traverse of ethylene-vinyl acetate copolymer are noted with appreciation. Since the elected polymer was not found to be allowable, search and examination was not extended to other polymers. Claims 50, 52, 56 and 59 were searched and examined only to the extent that they read on a particle which comprises ethylene-vinyl acetate copolymer.

The restriction and election requirements are made FINAL.

2. It is noted that application 11/126,617 recites hard surface cleaning compositions which would make the present method obvious, except that the '617 is drawn to crosslinked polymethyl methacrylate compositions, which were not searched or examined in the present application, due to the species election requirement. Should the search in the present case have cause to be broadened, issues of obviousness-type double patenting may arise.

Claim Rejections - 35 USC § 112

3. Claims 14 and 15 provide for the use of a process, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 14 and 15 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd.* v. *Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966). It isn't clear what applicant means by "operated according to the mathematical model system".... In addition, part of claim 15 appears to have been omitted, as it is a sentence fragment and lacks a period at the end.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1-3 and 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 03/089561. The reference discloses aqueous cleaning compositions comprising microcapsules containing an active material and/or an odor control agent encapsulated therein (p. 4, 2nd para.) The shell of the capsules may be made from a variety of materials, including ethylene-vinyl acetate copolymer (3rd para.) The microcapsules generally have an average diameter of about 0.001-about 1000 microns (p. 4, bottom). In a preferred embodiment, the active material is a perfume (p. 5, bottom). No molecular weight range for the polymer is disclosed, but the examiner takes the position that the range recited by applicant is broad enough to encompass essentially all practicable molecular weights, and that it would therefore be obvious to work within this range. The compositions preferably comprise surfactant (p. 16, bottom). Surfaces, preferably fabrics, are treated by placing the aqueous solution into a dispensing means, preferably a sprayer, and applying an effective amount onto the desired surface or article (p. 23, middle). Removal of surfactant compositions, followed by drying, is notoriously common in the fabric cleaning art and does not add patentable weight. Note that a number of the compositions in the examples comprise empty

microcapsules. The examiner takes the position that these capsules will fill with the perfume in the compositions upon storage, and that perfume will diffuse from the microcapsules, which will then absorb malodors, as the capsules are made of the same materials as claimed. Applicant's ClogP limitations encompass essentially all hydrophobic perfume ingredients, so working within this range would be obvious. This reference differs from the claimed subject matter in that it does not disclose a composition which reads on applicant's claims with sufficient specificity to constitute anticipation.

It would have been obvious at the time the invention was made to make such a composition, because this reference teaches that all of the ingredients recited by applicants are suitable for inclusion in a surfactant composition. The person of ordinary skill in the surfactant art would expect the recited compositions to have properties similar to those compositions which are exemplified, absent a showing to the contrary.

In the case where the claimed ranges overlap or lie inside ranges disclosed by the prior art, a *prima facie* case of obviousness exists. *In re Wertheim,* 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff,* 919 F.2d 1575, 16 USPQ2d 1934 (Fed Cir. 1990).

Allowable Subject Matter

8. Claims 16-18, 50, 52, 56 and 59 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, and if the claims were amended to recite the elected polymer.

9. The following is a statement of reasons for the indication of allowable subject matter: The closest prior art of record is the reference relied upon above. It does not disclose or make obvious the processing steps recited in these claims.

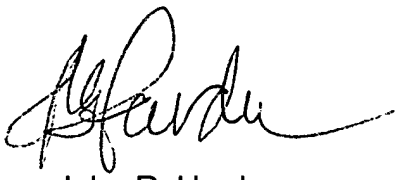
10. Any prior art made of record and not relied upon is of interest and is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (571) 272-1318. The examiner can normally be reached on Monday through Friday from 8:00 until 4:30. In the event that the examiner is not available, his supervisor, Dr. Yogendra Gupta, may be reached at (571) 272-1316.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John R. Hardee
Primary Examiner
February 14, 2006